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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

MARIAH A.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F066889

(Super. Ct. No. JD127368-00)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

Mariah A., in pro. per., and J. Anthony Bryan, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Franson, J., and Peña, J.

INTRODUCTION

Mariah A., petitioner, in propria persona, filed an extraordinary writ petition (Cal. Rules of Court, rule 8.452)¹ regarding her minor child, Gabriella A. (three years old). Petitioner seeks relief from the juvenile court's order issued at the status review hearing terminating petitioner's reunification services and setting a Welfare and Institutions Code section 366.26 hearing for Gabriella.² We grant the petition.

FACTS AND PROCEEDINGS

The Kern County Department of Human Services (department) filed a petition pursuant to section 300 on behalf of Gabriella and her half-siblings on September 19, 2011, after they were taken into protective custody on September 15, 2011. A first amended petition was filed on October 21, 2011, alleging that petitioner's husband,

¹ All further rule references are to the California Rules of Court.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Petitioner filed her writ petition seeking review of the juvenile court's orders listing, in addition to Gabriella, four older children between the ages of six and ten, and James A., who is one year old. At the review hearing, the juvenile court found that the four older children were not adoptable, therefore, no section 366.26 hearing was scheduled as to them. James A. was in the custody of his biological father, J.T., who had successfully completed family maintenance services. The juvenile court awarded joint legal custody of James A. to J.T. and petitioner and terminated the court's jurisdiction as to James A. and, therefore, did not schedule a hearing pursuant to section 366.26 for James A.

A writ proceeding is authorized by rules 8.452 and 8.456 as the means to review the orders of a juvenile court when it sets a cause for a hearing on whether to terminate parental rights pursuant to section 366.26. (§ 366.26, subd. (I); *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1022.) The juvenile court's orders as to Gabriella are, therefore, the only orders subject to our review by the instant writ petition. We note, however, that our findings and rulings as to the juvenile court's orders concerning termination of reunification services for Gabriella would be the same had the court set a section 366.26 hearing as to any of the other children.

Michael A., suffered from mental illness, was suicidal, and possessed a gun in violation of an order from Florida forbidding him to possess firearms. Michael A. physically, verbally, and emotionally abused one of the older children, sending that child on one occasion to the emergency room and causing the child to physically harm himself. Michael A. threw a phone at petitioner. Petitioner failed to protect her child from Michael A.'s abuse. Michael A. possessed weapons and in 2009, petitioner left Michael A. after he shredded her belongings with a knife. Petitioner also suffered from mental health issues but was not receiving mental health services. These issues and others placed Gabriella at risk for substantial serious physical harm or illness.

A second amended petition was filed on January 31, 2012, alleging that Gabriella was at substantial risk of physical harm or illness due to petitioner's mental illness or developmental disability. Petitioner had a long history of mental health issues, was diagnosed with Post Traumatic Stress Disorder, and was not currently receiving mental health treatment. Petitioner also relied on Michael A. to parent her children and he had unaddressed mental health issues, was verbally abusive to Gabriella's siblings, and did not parent the children effectively. Gabriella was also at risk due to Michael A.'s mental illness or developmental disability.

Prior to the jurisdiction hearing, the parents were both evaluated by two psychologists. Dr. Thomas Middleton concluded that neither parent would benefit from reunification services due to their underlying mental illness issues. Dr. Eugene Couture agreed that Michael A. would not benefit from reunification services due to his mental health issues, but concluded that petitioner would benefit from such services.

Dr. Middleton noted that if services were to be provided, petitioner should receive counseling and should be seen by a psychiatrist for medication management of her symptoms. Dr. Middleton's testing of petitioner indicated dependent personality traits with borderline and schizoid features. Dr. Middleton further diagnosed petitioner as

having a depressive disorder, not otherwise specified. Dr. Couture diagnosed petitioner with attention deficit hyperactivity disorder. Dr. Couture recommended close supervision of petitioner by her social worker.

At the conclusion of the jurisdiction hearing on February 24, 2012, the juvenile court found that petitioner relied on Michael A. to parent her children and that both petitioner and Michael A. had unaddressed mental health issues. The court found the allegations of the second amended petition to be true. At the conclusion of the disposition hearing on July 5, 2012, the juvenile court denied reunification services to Michael A. The court found clear and convincing evidence that the children faced a substantial danger to their safety in the physical custody of Michael A. and petitioner, adjudged the children dependents of the court, and removed them from the physical custody of Michael A. and petitioner.

The court granted petitioner family reunification services. Petitioner was ordered to participate in counseling for parent training and a 26-week child protection program. Petitioner was to have individual counseling to address self-esteem, codependency, domestic violence as a victim, and to receive mental health services. Petitioner was also to comply with medication recommendations and prescriptions by a mental health professional. Michael A. was granted weekly visitation with Gabriella.

Petitioner was advised of her right to appeal the juvenile court's rulings. Petitioner appealed the juvenile court's rulings on the single ground that notices given pursuant to the Indian Child Welfare Act (ICWA) were deficient as to the deceased father of the four older children. On February 1, 2013, in *In re Richard O.*, case No. F065415, this court found no merit to petitioner's challenge to the sufficiency of ICWA notice and affirmed the juvenile court's rulings at the jurisdiction and disposition hearings.³

³ Pursuant to Evidence Code sections 452, subdivision (d) and 459, subdivision (a), and over petitioner's objection, we hereby take judicial notice of our opinion in *In re*

The six-month review hearing was originally calendared for January 2, 2013. Due to numerous delays throughout the history of the case, a final review hearing was conducted on March 14 and 15, 2013. The social worker's report prepared in December 2012 stated that petitioner had completed 25 of 26 sessions in her 26-week Family Matters class. On July 6, 2012, petitioner completed a combined parenting/neglect class. Petitioner completed a 10-week anger management class in September 2012 and in October 2012, enrolled in a 12-week domestic violence class and was participating regularly. Petitioner was scheduled to finish the domestic violence class on December 19, 2012.

At the end of December 2012, a social worker reported that petitioner "indicated that she has been receiving counseling services to address the issues of self-esteem and co-dependency from Dr. Farber, M.D." A progress report was unavailable at that time.

The assessment of petitioner's appointment with Dr. Jagdeep Garewal, dated October 31, 2012, is attached to the December 2012 social worker's report. Dr. Garewal states under the category of "psychoeducation" that he discussed with petitioner epidemiology, pathophysiology, course and treatment, diagnosis management, treatment options, prognosis, medication effects and side effects, goals of treatment, risk factors, and access to services. Under the category of prognosis, Dr. Garewal indicates he discussed the illness and outcomes with and without treatment. Under the category of medication treatment options, Dr. Garewal discussed with petitioner long-term treatment with psychotropic medications, the need for monitoring regularly, as well as treatment choices. Dr. Garewal notes that petitioner was to be given sequential medication trials

Richard O., case No. F065415, because it is related prior proceedings leading to the present writ proceeding. (*Lang v. Roche* (2011) 201 Cal.App.4th 254, 257, fn. 1; *Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 401.)

for treatment of symptoms. Initially, Dr. Garewal prescribed an antianxiety medication from the benzodiazepine class of sedatives.

On October 31, 2012, petitioner told her social worker that she was planning to move out of Michael A.'s home by December 1, 2012. Petitioner said she would need a restraining order. The social worker informed her that there was a no contact order already in place for Michael A. and the four older children. On November 26, 2012, petitioner played a recording of an argument between her and Michael A. The social worker described the argument, which occurred in a moving car, as a tirade by Michael A. Petitioner reported that during the argument, Michael A. broke petitioner's cell phone into two pieces and threw it out of the car.

Petitioner informed the social worker on November 30, 2012, that she had moved out of Michael A.'s residence and was separated from him. The social worker was concerned about petitioner's ability to protect her children due to her ongoing relationship with Michael A. On December 4, 2012, petitioner told the social worker it would be difficult for her to remain apart from Michael A. and petitioner minimized Michael A.'s aggressive behavior.

Although petitioner was completing the services offered to her, social workers remained concerned because visits with the children were chaotic and petitioner did not have the ability to redirect the children's behaviors. The chaotic nature of the visits showed an inability by petitioner to parent adequately and unsupervised visits were not initiated by the department. Petitioner was referred to a guided visitation program.

Although petitioner reported to social workers that she was no longer living with Michael A., Michael A. told social workers in late December 2012 and early January 2013 that he was living with petitioner.⁴

⁴ On January 9, 2013, an agent with Homeland Security questioned Michael A. about alleged child pornography sent from his computer to petitioner. The agent

Petitioner spoke to social workers on February 7, 2013, and reported that Michael A. caught her, became forceful, threatened to hurt her, and took her out of California in mid-January 2013. On January 18, 2013, petitioner sent a friend a text message that stated Michael A. had lost his mind because petitioner told him what she said to federal investigators and he threatened to kill petitioner. Petitioner told her friend that Michael A. had kidnapped her and taken her to Arizona. Petitioner implored the friend to make a missing persons report because Michael A. was hurting her. The friend contacted the Kern County Sheriff's Department to report the incident. The Kern County Sheriff's Department learned that a federal search warrant related to the child pornography investigation had been executed on Michael A. on January 14, 2013.

The Kern County Sheriff's Department upgraded petitioner's status from missing person to kidnapping victim on January 20, 2013. Michael A.'s adult daughter contacted deputies and informed them that Michael A. and petitioner were at a campsite in Quartzsite, Arizona. Michael A. was arrested by Arizona authorities but later released because of lack of evidence. Petitioner said that she packed up the campsite on January 21, 2013, and drove to Blythe, California. She stayed the evening in Blythe waiting for Michael A. to meet her there but he never arrived. Petitioner drove back to the campsite in Quartzsite the morning of January 22, 2013, and found Michael A.'s body near a creek.⁵

In its report for the review hearing, the department noted that petitioner had made minimal progress toward alleviating or mitigating the causes for Gabriella's placement

questioned petitioner, who admitted that she was living with Michael A. Petitioner told the agent that she and Michael A. had "an interest" in child pornography and admitted looking at it. In its findings at the review hearing, the juvenile court did not rely on allegations that petitioner had illegally accessed child pornography.

⁵ At the review hearing, petitioner's counsel reported to the juvenile court that Michael A.'s autopsy results indicated that he died from an overdose.

outside the home. The department stated that returning Gabriella to petitioner's custody would create a risk of detriment to the child's safety and protection, or to her physical or emotional well-being. The department recommended termination of family reunification services to petitioner.

The review hearing was conducted on March 14 and 15, 2013. The social worker assigned to petitioner's case, Veronica Ruiz-Cox, testified that she supervised visits between petitioner and her children at the Child Visitation Center (CVC). After a visit on August 1, 2012, they were kicked out of the CVC due to the children's behavior and petitioner's inability to control the children during visitation. Thereafter, visits were held at the department's offices. Visits were attempted at a local park, but one of the older children would not listen and tried to run away. In January 2013, visits were resumed at CVC as long as a social worker was present. There were few visits in January 2013 because petitioner was not in the county.

The juvenile court initially noted that petitioner had maintained a relationship with Michael A. even though she was not supposed to do so. The court also observed petitioner had in the past testified that she was no longer in a relationship with Michael A. and this was not true. The court noted that petitioner's credibility as a witness was low. The court found that although petitioner had completed the programs required under her reunification plan, she had not shown any improvement in her ability to parent the children during her visits with them. The court noted that recent reports indicated petitioner still could not control the children and visits were chaotic. The court denied a section 388 petition filed by petitioner for the return of her children.

The court found that the hearing was a 6- and 12-month review hearing pursuant to section 366.21, subdivisions (e) and (f). The juvenile court terminated further reunification services to petitioner with regard to Gabriella. The court noted that petitioner had made minimally acceptable efforts to avail herself of services and that

return of Gabriella to petitioner's custody would create a substantial risk of detriment to Gabriella's safety, protection, and her physical or emotional well-being. The court found that the department had made reasonable efforts to assist petitioner and provided her with reasonable services. The court terminated petitioner's reunification services for Gabriella. The case was set for a section 366.26 hearing to determine a long-term plan for Gabriella. This petition ensued.

DISCUSSION

Petitioner seeks reversal of the juvenile court's order terminating her reunification services. Petitioner claims she finished all of the services pursuant to her reunification plan and that a primary reason for Gabriella's dependency, her abusive relationship with Michael A., is no longer a basis for continued jurisdiction of the juvenile court because Michael A. is deceased.

Although petitioner was represented by counsel at oral argument on June 6, 2013, she prepared the extraordinary writ petition herself. As we read the petition, it raises two issues. The first is a challenge to the juvenile court's jurisdiction. The second, liberally construed, constitutes a challenge to the sufficiency of the evidence to sustain the juvenile court's findings and orders.

The first issue raised by petitioner appears to be a belated challenge to the juvenile court's jurisdiction and disposition orders made in 2012. Petitioner filed an appeal from those proceedings raising only the issue of the juvenile court's findings that ICWA was inapplicable. Petitioner did not challenge the juvenile court's findings that the allegations of the petition were true. Permitting a parent to raise issues going to the validity of a final appealable order would undermine the concerns of finality and reasonable expedition, including the predominant interest of child and state. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *In re Janee J.* (1999) 74 Cal.App.4th 198, 206-207.)

This issue has been waived. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1149-1157.) The juvenile court maintained jurisdiction in this action.

Petitioner is also challenging the sufficiency of the evidence to support the juvenile court's findings concerning whether she should continue to receive reunification services because she finished the required services under her plan and Michael A. is deceased. We review the juvenile court's finding that reasonable services were provided to a parent for sufficiency of the evidence. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625-626.) If there is substantial evidence to support the juvenile court's findings, our duty ends and the juvenile court's orders must not be disturbed. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472 (*Precious J.*).)

Our review of the juvenile court's finding for sufficiency of the evidence requires that all reasonable inferences be given to support the findings and orders of the juvenile court. The record must be viewed in the light most favorable to those orders. The juvenile court's findings may not be disturbed if supported by substantial evidence. Issues of fact and credibility are questions of fact for the juvenile court to decide, not this court. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227 (*Tanis H.*).) In reviewing the reasonableness of services provided to a parent, we again view the evidence in the light most favorable to the respondent. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

The evidence before the juvenile court was that petitioner remained in what she herself recognized as an abusive relationship until Michael A. passed away in late January 2013. The juvenile court could reasonably conclude from the evidence before it that petitioner continued to maintain a tolerance for domestic abuse and failed to implement what she had been taught in her domestic violence training. Petitioner also had great difficulty controlling her children during visitations, which were described by social workers as chaotic. We note, however, that petitioner completed all of her required classes and regularly visited Gabriella and the other children.

We are troubled in this case with the paucity of information in the record regarding the department's compliance with mental health services, a critical component of petitioner's reunification plan. Although they disagreed as to whether petitioner would benefit from reunification services, Drs. Middleton and Couture both diagnosed petitioner with mental health problems. Dr. Couture recommended close monitoring by the department of how petitioner received psychological and psychiatric services. Dr. Middleton specifically recommended that petitioner receive psychological and psychiatric treatment, if the court ordered that she receive reunification services.

At the conclusion of the disposition hearing in July 2012, the juvenile court specifically ordered that petitioner receive individual counseling to address the issues of self-esteem and codependency, mental health services, and to comply with her medical doctor's recommendations and prescriptions.

There are, however, very few references in the record concerning the nature of psychological and medical treatment petitioner received. There are only the references to petitioner's counseling from Dr. Farber and her appointment with Dr. Garewal. The social worker reported in one report that a progress report from Dr. Farber was unavailable with no indication as to why the report was unavailable. Dr. Garewal's appointment with petitioner occurred late in the reunification process, on October 31, 2012. There is no indication in the record as to why the appointment occurred so late in the proceedings. Dr. Garewal explained a course of treatment for petitioner, but was only beginning the introduction of medications through sequential trials, starting initially with a sedative. If petitioner was receiving a critical component of her reunification services so late in the proceedings, and the department failed to properly monitor these services, we question the efficacy of the reunification services provided to petitioner.

The current record reveals nothing concerning the nature, duration, and quality of psychological and psychiatric services obtained by petitioner. The social workers'

reports have much more detailed information concerning the mental health services offered to the four older boys than those offered to petitioner. Psychological and psychiatric services were a major component of petitioner's reunification plan, but we know little about them. This record is largely silent on how petitioner procured services, whether she benefitted from those services, and whether the department facilitated or properly monitored this part of petitioner's reunification plan.

If the department failed to follow through in facilitating or otherwise assisting petitioner with obtaining psychological and psychiatric services, the juvenile court's finding that reasonable services were provided to petitioner necessarily comes into question. Where reasonable services have not been provided to a parent or guardian, such services may be extended up to 24 months pursuant to section 361.5, subdivision (a)(4) where to do so would be in the best interests of the child.⁶

There must be substantial evidence to support a juvenile court's finding that adequate reunification services were provided. (*Precious J.*, *supra*, 42 Cal.App.4th at p. 1472.) Where a reunification plan is inadequate and/or the social services agency has failed to comply with portions of that plan, there is not substantial evidence to support the juvenile court's findings and its orders are reversed. (*Id.* at pp. 1474-1480.) Accordingly, we will reverse the juvenile court's finding that adequate services were provided to petitioner, vacate its order setting the matter for a hearing pursuant to section 366.26, and remand for further proceedings.

⁶ The juvenile court can, pursuant to subdivision (g)(1) of section 366.21, permit additional services up to six more months if the court determines there is a substantial probability the child will be returned to the parent's custody within that time frame. The court can do so, however, only if it finds that the parent (1) has consistently and regularly contacted and visited the child; (2) made significant progress in resolving the problems that led to the child's removal; and (3) has demonstrated the capacity and ability to complete the objectives of the plan and to provide for the child's safety and protection.

DISPOSITION

The petition for extraordinary writ is granted and the juvenile court's order setting this matter for a hearing pursuant to Welfare and Institutions Code section 366.26 is vacated. The matter is remanded for a hearing to address the issue of what mental health services were provided to petitioner, whether these services were adequate, and whether they were provided or offered to petitioner in a timely manner. If the juvenile court determines that reasonable mental health services were not provided to petitioner, were inadequate, or untimely, the court shall reopen reunification services to petitioner and make such orders it deems necessary to provide such services for six months pursuant to Welfare and Institutions Code section 366.5, subdivision (a)(4).

Alternatively, if the court determines that reasonable, adequate, and timely mental health services were provided to petitioner, the court may once again set the matter for a hearing pursuant to Welfare and Institutions Code section 366.26. This opinion is final forthwith as to this court.